

1455 Market Street, 22nd Floor
San Francisco, California 94103
415.522.4800 FAX 415.522.4829
info@sfcta.org www.sfcta.org

May 19, 2017

Neha Gupta, Deputy City Attorney
Office of the City Attorney
1 Dr. Carlton B. Goodlett Place, City Hall, Room 234
San Francisco, CA 94102

Subject: Contract No. 16/17-01

Dear Ms. Gupta:

Enclosed are two copies of Contract No. 16/17-01, between the San Francisco County Transportation Authority and City and County of San Francisco's Office of the City Attorney, for general legal counsel services.

Please return a fully executed copy of the agreement upon ratification. If you have any questions, please contact Lily Yu, Principal Management Analyst, at 415.522.4811. Thank you.

Sincerely,



Angela Tsao
Administrative Assistant



Plan, Fund, Deliver

COMMISSIONERS

Aaron Peskin
CHAIR

Katy Tang
VICE CHAIR

London Breed

Malia Cohen

Mark Farrell

Sandra Lee Fewer

Jane Kim

Hillary Ronen

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Jeff Sheehy

Norman Yee

Tilly Chang
EXECUTIVE DIRECTOR

Attachment (1)
cc: CF, HP, LY



Agreement between the San Francisco County Transportation Authority and

**City and County of San Francisco:
Office of the City Attorney**

CONTRACT NO. 16/17-01

This Agreement is made this 1st day of July, 2016, in the City and County of San Francisco, State of California, by and between: City and County of San Francisco, through the Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, California 94102, hereinafter referred to as "City Attorney" or "Contractor," and the San Francisco County Transportation Authority, a municipal corporation, hereinafter referred to as "Transportation Authority."

RECITALS

WHEREAS, since its inception, the Transportation Authority has contracted with, and wishes to continue contracting with, the City Attorney for general legal counsel services; and

WHEREAS, on June 28, 2016, the Transportation Authority adopted Resolution 16-57 authorizing the Executive Director to execute an annual contract with the City Attorney for general legal counsel services for \$100,000, and authorizing the Executive Director to modify contract terms and non-material contract terms and conditions; and

WHEREAS, City Attorney represents and warrants that it is qualified to perform the services required by Transportation Authority as set forth under this Agreement; and

Now, THEREFORE, the parties agree as follows:

1. Term of the Agreement

The term of this Agreement shall be from July 1, 2016 to June 30, 2017. Any such extension shall be by amendment to the Agreement.

2. Services Contractor Agrees to Perform

The City Attorney agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

3. Compensation

The breakdown of costs and the invoicing schedule associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall the amount of this Agreement exceed one hundred thousand dollars (\$100,000).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor unless reports, services, or both, required under this Agreement are received from Contractor and are performed in accordance with this Agreement. Transportation Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Transportation Authority be liable for interest or late charges for any late payments.

4. Changes

- A. The Transportation Authority may, at any time by written order, make changes within the scope of work and services described in this agreement, subject to the approval of Contractor. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, the Transportation Authority and Contractor shall make an equitable adjustment as mutually agreed upon in the limit on compensation or in the time of required performance or both in the form of an amendment to this contract.
- B. In the event that Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services or may require an adjustment in the amount of compensation specified herein, Contractor shall so advise the Transportation Authority immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in scope of services and/or compensation resulting there from.
- C. Such notice shall be given to and approved by the Transportation Authority prior to the proposed adjustment. Any and all agreed upon pertinent charges shall be expressed as a written modification to this Agreement prior to implementation of such charges.

5. Contractor Status

- A. Neither Contractor nor any party contracting with Contractor shall be deemed to be an agent or employee of the Transportation Authority. Contractor is and shall be an independent Contractor and the legal relationship of any person performing services for Contractor shall be one solely between said parties.
- B. Contractor shall not subcontract, without the prior written approval of the Transportation Authority, for any services to be performed by it under this Agreement except for subconsultants identified in Contractor's proposal, or for service firms engaged in drawing, production, typing, printing, transcriptions, delivery, services of process or other administrative services. Contractor shall be solely responsible for reimbursing any subconsultants and the Transportation Authority shall have no obligation to them.

6. Transportation Authority Representative

Except when approval or other action is required to be given or taken by the Transportation Authority Board, the Transportation Authority's Executive Director or such person or persons as he or she shall designate in writing from time to time, shall represent and act for the Transportation Authority.

7. Indemnification

- A. Contractor shall indemnify, keep and save harmless the Transportation Authority, and its boards, commissions, officers, agents, and employees, from and against any and all suits, claims or actions arising out of any injury to persons or property that may occur, or that may be

alleged to have occurred, in the course of the performance of this Agreement by Contractor caused by an act or omission of Contractor or its employees, subconsultants, or agents.

- B. Contractor further agrees to defend any and all such suits, claims or actions and pay all charges of attorneys and all other costs and expenses arising there from or incurred in connection therewith and if any judgment be rendered against the Transportation Authority or any of the other individuals enumerated above in any such action, Contractor shall, at its expense, satisfy and discharge the same.

8. Work Space and Support Services

The Transportation Authority has limited support staff and workspace available. Contractor is expected to provide his/her workspace.

9. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Transportation Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

10. Termination for Convenience

Transportation Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Transportation Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

Contractor shall be paid its costs, including contract closeout cost and reasonable profit on work performed up to the termination of said contract if termination is for convenience. If the contract is terminated or suspended for cause due to default in time, manner, or inability to perform or poses safety hazards to the Transportation Authority, Transportation Authority staff, or the public; Contractor shall be paid for only actual expenditures incurred plus any costs reasonable and necessarily incurred by Contractor up to the effective date of termination.

11. Nondiscrimination

In performance of this Agreement, Contractor agrees not to discriminate against any employee, Transportation Authority employee working with Contractor, or applicant for employment with Contractor on the basis of race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, or disability or AIDS/HIV status.

12. Severability

Any provisions in this Agreement prohibited by, or that is unlawful or unenforceable under any applicable law shall, as to such provisions, be ineffective without affecting other provisions of the Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

13. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Transportation Authority: **Ms. Cynthia Fong**
Deputy Director for Finance and Administration
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, California 94103
Phone: 415.522.4800
Fax: 415.522.4829
E-mail: cynthia.fong@sfcta.org

To Contractor: **Ms. Neha Gupta**
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Phone: 415.554.4665
Fax: 415.554.4699
E-mail: Neha.Gupta@sfgov.org

Any notice of default must be sent by registered mail. Either party hereto may designate a new address or recipient for notice purposes by written notice to the other party.

14. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

15. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

16. Proprietary or Confidential Information of Transportation Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Transportation Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Transportation Authority. Contractor agrees that all information disclosed by Transportation Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

17. Conflicts

17.1 General. The Transportation Authority and the City Attorney contemplate that the Transportation Authority will engage the City Attorney's services in two types of situations that

present the potential for conflicts of interest under the California Rules of Professional Responsibility: 1) concurrent representation; and 2) joint representation. Concurrent representation exists when the City Attorney represents the Transportation Authority in a matter and also represents the City in other related or unrelated matters that may involve or affect the Agency. Joint representation exists when the City Attorney represents the Transportation Authority and the City in the same matter.

This section sets forth the agreement between the parties that the Transportation Authority decision to engage the City Attorney's services for any particular matter includes: 1) the Transportation Authority consent to the City Attorney's ongoing representation of the City, notwithstanding any conflict of interest; and 2) the Transportation Authority's agreement that the Transportation Authority will not seek to disqualify the City Attorney's Office or any of its attorneys from representing the City Attorney's Office's primary client, the City, because of any conflict of interest arising out of such concurrent or joint representation.

17.2 Nature of Relationship. The Transportation Authority and the City share a unique relationship. Although the Transportation Authority is a separate legal entity organized under state law, it exists to perform certain functions exclusively for and by authorization of the City, and the territory over which it has jurisdiction is entirely within the City. The City and the Transportation Authority cooperate in these and other affairs. The Transportation Authority is governed by a Commission consisting of the eleven members of the City's Board of Supervisors.

The Transportation Authority was created in 1989 by a vote of the San Francisco electorate. The Transportation Authority has its own governing board consisting of the eleven members of the Board of Supervisors of the City acting as the Board of Commissioners of the Transportation Authority. The Transportation Authority is governed by an administrative code separate from that of the City's, and the agency operates as a special-purpose government agency under State law, separate and distinct from the City. The City's Mayor does not have oversight control over the Transportation Authority. The ordinance that created the Transportation Authority empowers it to independently issue debt in order to finance transportation projects in the San Francisco County Transportation Expenditure Plan. The Transportation Authority's borrowing capacity is separate and distinct from that of the City. The Transportation Authority is responsible for long-range transportation planning for the City, and analyzes and funds improvements for the City's transportation infrastructure, and administers certain local sales tax revenue.

In light of this unique, interdependent, and cooperative relationship, the Transportation Authority and the City agree that from time to time their best mutual interests will be served by the City Attorney providing legal services to the Transportation Authority on particular matters in accordance with the terms and conditions of this Agreement. While the parties anticipate that circumstances in which the Transportation Authority and the City will be adverse will be rare, in those circumstances the parties intend that where such a conflict is anticipated in advance, the Transportation Authority will retain separate counsel and where the conflict is not anticipated at the outset, the City Attorney will timely advise the Transportation Authority when such a conflict arises and the Transportation Authority will retain separate counsel.

17.3 Waiver by the Transportation Authority of Conflicts Arising Out of Concurrent Representation.

The Transportation Authority acknowledges that the Charter of the City and County of San Francisco charges the City Attorney with the responsibility to represent the City and County, including all its boards, commissions, departments and officers. Given the nature of the City Attorney's relationship with the City, the City Attorney must preserve its ability to represent the City on matters that may arise in the future, including matters in which the City's interests are adverse to the

Transportation Authority's interest. The City Attorney is not willing to undertake representation of the Transportation Authority in the absence of the Transportation Authority's consent as set forth in this section because the City Attorney must preserve the ability to represent its primary client, the City. The Transportation Authority's engagement of the City Attorney with respect to any particular matter includes the Transportation Authority's consent to the City Attorney's ongoing representation of its primary client, the City, in all matters, including transactions and litigation, in which the interests of the City Attorney's primary client are potentially or actually adverse to the interests of the Transportation Authority and notwithstanding that the City Attorney may have obtained confidential information from the Transportation Authority, subject to the conditions below.

At the time the Transportation Authority engages the City Attorney's services for a particular matter, the City Attorney will inform the Transportation Authority based on the available facts of any specific matters in which the City's interests and the Transportation Authority's interests are then actually or potentially adverse. Neither the City, the Transportation Authority, nor the City Attorney intend to provide for the City Attorney's continuing representation of both the Transportation Authority and the City in matters where the interests of the Transportation Authority and the City are actually adverse, but the parties anticipate that any such instances are likely to be very rare. In the event that an unanticipated actual conflict of interest arises during the course of representation, the City Attorney will promptly inform the Transportation Authority that a conflict has arisen, and will discontinue representing the Transportation Authority and continue to represent the City, provided that the City Attorney shall not disclose the reasons for the conflict to the Transportation Authority if the City client has requested that those reasons remain confidential. The Transportation Authority acknowledges that in such a circumstance it is free to hire substitute counsel of its own choosing and at its own expense.

The Transportation Authority acknowledges that its consent to the City Attorney's ongoing representation of the City in matters where the interests of the City and Transportation Authority are potentially or actually adverse has significant implications that the Transportation Authority has considered. For example, the City Attorney may take positions antagonistic to the Transportation Authority, or seek to compel documents or testimony from the Transportation Authority, in litigation brought by third parties against the City and the Transportation Authority where the City does not represent the Transportation Authority. The City Attorney may learn confidential information in the course of representing the Transportation Authority that may be relevant to matters in which the interests of the City and Transportation Authority become adverse.

The City Attorney's Office will take reasonable steps to protect confidential information of the Authority from disclosure to the City with respect to matters in which the interests of the City and Transportation Authority are adverse, including instituting screens between any attorney with confidential information and attorneys representing the City in the adverse matter when the City Attorney's Office becomes aware of a conflict. Under such ethical screens, attorneys representing the City on a particular matter will not have access to files containing confidential information from the Authority, and the two groups of attorneys will not communicate regarding the matter except as authorized by the City and the Authority. The City Attorney's Office will not intentionally or knowingly disclose any confidential information of the Authority to City in matters where the interests of the City and Authority are adverse. Authority acknowledges, however, that the City Attorney's Office cannot guarantee that confidential information of the Authority may not be unintentionally or inadvertently shared with the City.

By signing this agreement, the Transportation Authority acknowledges that it has been advised of the potential conflicts associated with concurrent representation; that it has been advised of the

City Attorney's present and continuing relationship with the City; and that the Transportation Authority, upon requesting assistance from the City Attorney on a particular matter, and having been presented with the information about potential and actual conflicts of interest as required by this section, provides its consent under Rule 3-310 of the Rules of Professional Conduct to the City Attorney's ongoing representation of the City, notwithstanding any potential or actual conflict of interest between the City and the Transportation Authority that exists or may develop. The Transportation Authority waives any and all rights to disqualify the City Attorney from representing the City based on a conflict of interest arising out of concurrent representation of the City and the Transportation Authority. The Transportation Authority's consent and waiver extends to "subsequent representation," where by reason of the City Attorney's former representation of the Transportation Authority in a matter, the City Attorney has confidential information material to a matter in which the City's interests are adverse to the Transportation Authority's interests, and the City Attorney no longer represents the Transportation Authority in any matter.

17.4 Waiver by the Transportation Authority of Conflicts Arising Out of Joint Representation and Defense.

As the Transportation Authority is aware, the City Attorney's joint representation of the Transportation Authority and the City in the same matter, such as on specific City-sponsored transportation projects, may create conflicts of interest in that the interests and objectives of each client individually on particular issues are, or may become, inconsistent with the interests and objectives of the other. The Transportation Authority acknowledges that the City Attorney's representation of multiple interests in the same matter has significant implications that the Transportation Authority has considered. For example, rather than the City Attorney vigorously asserting a single client's interest on an issue, there likely will be a balancing of interests between the parties represented. Terms that are advantageous to one party are typically disadvantageous to the other party. Further, in the event of a significant legal dispute between the Transportation Authority and the City over such a matter or a matter in which their interests become actually adverse with regard to such a matter, the City Attorney will advise the Transportation Authority of the Transportation Authority's need to retain outside counsel and the Transportation Authority would need to procure substitute counsel at its expense for such a matter. There are additional issues resulting from joint representation. Under California Evidence Code section 962 and California case law, there is no attorney-client privilege between or among clients who are jointly represented in a matter so that joint representation may result in a waiver of the attorney-client privilege with respect to the other client. Where appropriate, the Transportation Authority and the City agree to enter into a joint defense agreement for a specific matter on terms and conditions mutually acceptable to both parties, to ensure the confidentiality of shared information from third parties.

By signing this Agreement the Transportation Authority acknowledges that it has been advised of the potential conflicts associated with joint representation; that it has been advised of the City Attorney's present and continuing relationship with the City; and that the Transportation Authority, upon requesting assistance from the City Attorney on a particular matter in which the City Attorney also represents the City, nevertheless wants the City Attorney to represent both the Transportation Authority and the City in connection with such a matter. By signing this Agreement, the Transportation Authority provides its consent under Rule 3-310 of the California Rules of Professional Conduct, agrees to the terms and conditions set forth in this Section, and waives any and all rights to disqualify the City Attorney from representing the City because of any conflict of interest arising out of the joint representation of the City and the Transportation Authority. The

Transportation Authority acknowledges that it may hire substitute counsel at its own expense at any time for any particular matter.

17.5 Consultation with independent counsel. By signing this Agreement, the Transportation Authority acknowledges that it has been advised to consult with its own counsel, has had an opportunity to do so, and in fact consulted with its own counsel before signing this Agreement.

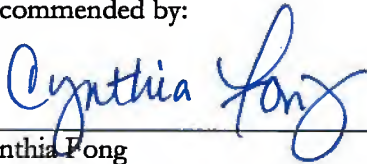
17.6 Survival. The waivers contained in this section shall survive any termination of this Agreement.

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

TRANSPORTATION AUTHORITY

CITY AND COUNTY OF SAN FRANCISCO

Recommended by:



Cynthia Fong
Deputy Director for Finance and Administration
San Francisco County Transportation Authority



Authorized Signature

Dennis J. Herrera
Printed Name

Approved by:



Tilly Chang
Executive Director
San Francisco County Transportation Authority

City Attorney
Title

City and County of San Francisco
Company Name

1 Dr. Carlton B. Goodlett Place, Room 325
Address

San Francisco, CA 94102
City, State, ZIP

415.554.4700
Phone Number

APPENDICES

- A. Services to be Provided by Contractor
- B. Calculation of Charges

Appendix A

Services to be Provided by Contractor

I. Description of Services

The scope of the Contractor services shall consist of the following:

- a. Upon explicit request of the Executive Director or the Transportation Authority Chair, Contractor will attend Committee and Board meetings of the Transportation Authority to provide immediate advice on Brown Act and rules compliance issues, as they arise during the meeting.
- b. In addition, upon request, Contractor agrees to provide verbal and written legal representation, advice and counsel to the members, officers, employees and advisory committees of the Transportation Authority on matters related to the routine operations of the Transportation Authority. When requested, a draft copy of any written legal opinion will be provided before the opinion is finally issued.
- c. Requested legal services may include, but not be limited to, the following categories:
 - i. Administration: procedural and parliamentary rule issues at Board and Committee meetings, review of internal policies and procedures, Brown Act, California Public Records Act, and ethics issues, including but not limited to, conflict of interest issues.
 - ii. Personnel: All labor related issues including benefits, hiring, discipline, termination and review for revisions of Personnel Manual.
 - iii. Budget & Contracts: Review for revisions, protests and appeals.
 - iv. Citizen Advisory Committee: Special concerns, conflicts of interest.
 - v. Projects: Including, but not limited to, issues related to California and federal environmental laws.
 - vi. Training: California Public Records Acts and Brown Act
 - vii. General Advice
- d. All requests for legal advice or services for the Transportation Authority must be approved by the Executive Director or the Transportation Authority Chair. However, any Transportation Authority Board Commissioner may seek legal advice from Contractor on ethics issues, including, but not limited to conflicts of interest related to the Commissioner's duty on the Board.

II. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with Transportation Authority will be:

Cynthia Fong
Deputy Director for Finance and Administration
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, California 94103
Phone: 415.522.4800
Fax: 415.522.4829
E-mail: cynthia.fong@sfcta.org

Appendix B

Calculation of Charges

Fee Structure

For the services outlined in Appendix A, Contractor agrees to perform said services for a total amount not to exceed \$100,000.

Labor Costs

The following rates will apply for the duration of this contract, unless amended in writing by mutual agreement between Transportation Authority and City Attorney:

Position	Classification	Billing Rate Range
8177	Trial Attorney	\$198 - \$265
8181	Asst. Chief Attorney I	\$252 - \$285
8182	Head Attorney	\$245 - \$277
8183	Asst. Chief Attorney II	\$259 - \$293
8193	Chief Attorney I	\$260 - \$295
AB44	Confidential Chief Attorney II	\$266 - \$299

Out-Of-Pocket Expenses

Transportation Authority shall reimburse City Attorney for all reasonable and necessary out-of-pocket expenses incurred in the course of rendering services outlined in Appendix A. City Attorney shall use cost-effective means in incurring any permitted reimbursable cost. No markup or surcharge shall be added for any pre-approved travel and out-of-pocket expenses. Travel expenses shall not exceed the per diem rates and allowances established by the General Services Administration and Internal Revenue Service, as appropriate.

Invoice Payment

City Attorney shall submit quarterly invoices to the Transportation Authority by not later than the 20th day of the month following each quarter, for services and eligible expenses incurred through the final day of the preceding quarter. Contractor's invoice shall include:

- Itemized costs, including identification of each employee or subcontractor staff that provided services during the period of the invoice, the number of hours and hourly rates for each employee or subcontractor staff member
- Vendor and subconsultant invoices, if any
- Receipts or supporting documentation for out-of-pocket expenses, if any

All invoices are to be sent to the Transportation Authority via e-mail to ap@sfcta.org or mail to the following:

Accounts Payable
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, California 94103

TOTAL

not to exceed \$100,000